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Arizona Corporation Commission

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AZ CORP COMMISSION
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In the matter of)

DOCKET NO. S-03242A-99-0000

SAFARI MEDIA, INCORPORATED)

1580 North Kolb, #200)

Tucson, Arizona 85715)

MARYANNE CHISHOLM)

4056 N. West Fernhill Circle)

Tucson, Arizona 85750)

MARK FILLMORE CHISHOLM)

4056 N. West Fernhill Circle)

Tucson, Arizona 85750)

THUC NGUYEN)

300 Linda Vista Terrace)

Freemont, California 94539)

Respondents.)

**MOTION TO DISMISS TEMPORARY
ADMINISTRATIVE ORDER
TO CEASE AND DESIST
WITHOUT PREJUDICE**

Pursuant to Rule 41(a) of the Arizona Rules of Civil Procedure, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby moves to dismiss, without prejudice, a prior Temporary Order to Cease and Desist and Notice of Opportunity for Hearing Regarding Proposed Order for Relief filed against the above-encaptioned Respondents in November, 1999. The Division submits that this particular action is warranted at this time in light of the developing circumstances in this case, which are outlined more fully below.

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I.

PROCEDURAL HISTORY

The Division initially filed a temporary administrative order to cease and desist against the named Respondents on or about November 9, 1999. This filing was made following a Division inquiry concluding that the Respondents had violated multiple provisions of the Securities Act of Arizona, including the securities fraud provisions of A.R.S. § 44-1991. Following the filing of this administrative order, Respondents Safari Media, Inc. ("Safari"), Maryanne Chisholm ("Chisholm"), and Mark Fillmore Chisholm ("Mr. Chisholm") filed a timely request for a hearing.

On January 10, 2000, Safari, Chisholm, and Mr. Chisholm entered an "Agreement" with the Division whereby each of these parties agreed to adhere to this temporary administrative order indefinitely, or until such time that a resolution was ultimately reached concerning this order. In accordance with this Agreement, the appointed hearing officer issued a "Second Procedural Order" ruling that this matter would be held in abeyance "pending the Division's filing a Motion for the scheduling of further proceedings as required."

On June 1, 2000, the final respondent in this matter, Respondent Thuc Nguyen ("Nguyen"), filed a motion to dismiss the temporary order for lack of personal jurisdiction. After opposing briefs were filed, the appointed hearing officer denied the request for Nguyen's dismissal and ordered that Nguyen either file a request for hearing or be subject to a default proceeding. In connection with this ruling, the hearing officer also scheduled a pre-hearing conference for July 20, 2000.

Both the Division and counsel for all Respondents attended the July 20, 2000 pre-hearing conference. During this meeting, the Division disclosed that it was, in conjunction with the Attorney General's Office, pursuing civil remedies against three of the four named Respondents. The Division also revealed that in connection with these parallel proceedings, the Maricopa County Superior Court had issued a Temporary Restraining Order against Safari, Chisholm, and Mr. Chisholm, and that the Superior Court had appointed a receiver to take control of these defendants' assets. In light of these Superior Court developments, the Division requested a stay of the

1 administrative proceedings against all named Respondents. Counsel for each of the respective
2 Respondents concurred with the Division's request.

3 Following this conference, the hearing officer for the Commission issued a Fourth
4 Procedural Order on July 13, 2000. As part of this Order, the hearing officer decreed that "the
5 subject proceedings as against all named Respondents shall be stayed until further Order by the
6 Commission." With this Order, the administrative proceedings were continued indefinitely as the
7 focus in this matter became the civil proceedings in Superior Court.

8 II.

9 DISCUSSION

10 On October 23, 2002, the Maricopa County Superior Court permanently enjoined Safari,
11 Chisholm and Mr. Chisholm from violations of the Securities Act of Arizona, ordered that these
12 same parties pay restitution in the amount of approximately \$22,000,000, and ordered that the
13 receivership initially established in this matter be made permanent. In a separate proceeding,
14 Nguyen pled guilty in Pima County to, *inter alia*, conducting an illegal enterprise in connection with
15 his role in the Safari operation, and he is currently awaiting sentencing. Chisholm and Mr.
16 Chisholm presently remain under indictment pertaining to their respective roles with Safari.

17 With the Division's allegations having now been addressed, adjudicated, and remedied by
18 the Superior Court's judgment, there exists little purpose in seeking to revisit these same issues in
19 the original administrative proceeding. However, because Respondents Safari, Chisholm and Mr.
20 Chisholm have appealed the Superior Court's October 23, 2002 decision, the dismissal in this
21 administrative proceeding should understandably be made *without prejudice*. By electing this form
22 of disposition, the current administrative action can conclude without precluding the Division from
23 pursuing a new administrative action in the event that the results from other court proceedings are
24 ultimately reversed or are otherwise modified.

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26 ...

III.

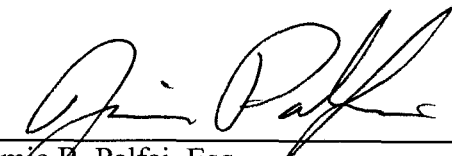
CONCLUSION

For all the foregoing reasons, the Division hereby moves that the Administrative Law Judge in this matter to dismiss this pending administrative action without prejudice.

RESPECTFULLY SUBMITTED this 29th day of January, 2003.

ARIZONA CORPORATION COMMISSION,
SECURITIES DIVISION

By



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the foregoing FILED this 29th day
of January, 2003 with:

Docket Control
Arizona Corporation Commission
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Phoenix, Arizona 85007

1 COPY of the foregoing HAND-DELIVERED
2 this 2nd day of January, 2003 to:

3 Administrative Law Judge Marc Stern
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 COPY of the foregoing MAILED this
8 2nd day of January, 2003 to:

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